

Serial No. 09/664,565

REMARKS

In the Advisory Action, the Examiner noted that a combination of cited references overcomes the claimed invention.

By this response, claims 1-8 have been cancelled and new claims 9-18 have been added. Applicant believes that new claims more clearly recite aspects of the invention.

In view of the following discussion, Applicant submits that none of the claims now pending in the application is obvious under the provisions of 35 U.S.C. §103. Thus, Applicant believes that all these claims are now in condition for allowance.

It is to be understood that the Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing this submission.

REJECTIONS

35 U.S.C. §103

Claims 1-8

The Examiner has rejected claims 1-8 as being unpatentable over Li (U.S. Patent No. 6,707,796, hereinafter "Li") in view of D'Souza (U.S. Patent No. 6,173,324, hereinafter "D'Souza"). In response, Applicant has cancelled claims 1-8.

As such, rejection of claims 1-8 is now moot.

NEW CLAIMS

Applicant has added new claims 9-18.

New independent claim 1 (and similarly, new independent claim 14), recites limitations not taught, shown, or suggested by Li and D'Souza, alone or in a combination.

Li teaches a system 400 having a backbone 401 and a plurality of routers S1-S7. Each of the routers S1-S7 is selectively coupled to a MSP (i.e., ABR) router 402 or a MSP router 406 on the backbone 401 using a respective physical link (FIG. 4; col. 6,

369101_1

Serial No. 09/664,565

lines 52-67). However, Li does not disclose a method for a configuring a router comprising the steps of (as recited in claims 1 and similarly in claim 14):

establishing a virtual link from the router to the backbone through the at least one non-ABR and at least one ABR of an area associated with the at least one non-ABR when said physical link has been established to the at least one non-ABR; and

establishing a virtual link from the router to the backbone through the at least one ABR when the physical link has been established to the at least one ABR....

The D'Souza patent fails to bridge the substantial gap between the Li patent and the claimed invention. Specifically, D'Souza teaches a means for data fault detection and isolation in data network 10 having a failed router using existing physical links (col. 2, lines 43-65; FIG. 1). However, similar to Li, D'Souza does not disclose a method for a configuring a router comprising the above mentioned steps, which are recited in claims 1 and 14. As such, D'Souza also does not teach Applicant's invention.

Moreover, D'Souza cannot be utilized to modify the teachings of Li in a manner that would result in the methods recited in claims 1 and 14. As such, Li and D'Souza, alone or in a combination, would not produce Applicant's invention recited in claims 1 and 14.

The test under 35 U.S.C. § 103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The combination of Li and D'Souza fails to teach or suggest Applicant's invention as a whole.

389101_1

Serial No. 09/664,565

As such, Applicants submit that independent claims 1 and 14 are not obvious in view of a combination of Li and D'Souza and fully satisfy the requirements of 35 U.S.C. § 103 and are patentable thereunder.

Furthermore, claims 10-13 and 15-18 depend directly from claims 1 and 14, respectively, and recite additional features thereof. As such, and for at least the reasons discussed above, Applicant submits that claim claims 10-13 and 15-18 are also not obvious in view of a combination of Li and D'Souza and fully satisfy the requirements of 35 U.S.C. § 103 and are patentable thereunder.

Therefore, Applicant respectfully requests allowance of claims 9-18.

369101_1

Serial No. 09/664,565

CONCLUSION

Thus, the Applicants submit that none of the claims presently in the application is obvious under the provision of 35 U.S.C. §103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. at (732) 530-9404 so appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,



Eamon J. Wall
Registration No. 39,414
Attorney for Applicant(s)

Dated: 5/27/05

CUSTOMER #46,363
MOSER, PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
732-530-9404 - Telephone
732-530-9808 – Facsimile

369101_1